

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MAURICIO SALAZAR</b>	:	DETERMINATION
	:	DTA NO. 830180
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Tax under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 2019.	:	

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Petitioner, Mauricio Salazar, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income tax under article 22 of the Tax Law and the Administrative Code of the City of New York for the year 2019.

A videoconferencing hearing via Cisco Webex was held before Kevin R. Law, Administrative Law Judge, on July 14, 2022, with all briefs to be submitted by December 30, 2022, which date commenced the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

***ISSUE***

Whether petitioner has sustained his burden of proving entitlement to his claim for the dependent care credit alleged to have been incurred for the care of his mother.

***FINDINGS OF FACT***

1. Petitioner, Mauricio Salazar, filed a New York State personal income tax return, form IT-201, for tax year 2019 (the return) as head of household, on which he claimed his mother as a dependent. On the return, petitioner reported wages from Mrs. Mary's Place, HCS Inc.-Field.

2. On the return, petitioner claimed a \$3,465.00 child and dependent care credit relating to dependent care expenses alleged to have been incurred for the care of his mother. In addition, petitioner claimed tax withheld and other credits, not at issue herein, resulting in a total refund claimed in the amount of \$3,988.00.

3. Petitioner's return was selected for a routine desk audit prior to the issuance of the requested refund. On May 15, 2020, the Division of Taxation (Division) issued an audit inquiry letter requesting documentation of the claimed dependent's residency and for proof of his expenses for her care.

4. In response, petitioner provided documentation establishing that he could claim his mother as a dependent, but he did not submit documentation establishing that he paid for her care while he was working.

5. On September 11, 2020, the Division issued an account adjustment notice based on petitioner's failure to provide supporting documentation substantiating the dependent care credit claimed.

6. On November 4, 2020, the Division issued a notice of disallowance to petitioner allowing a refund in the amount of \$523.00<sup>1</sup> and denying the \$3,465.00 dependent care credit claimed. A review of the notice of disallowance indicates that the Division did not change petitioner's filing status from head of household, nor did the Division disallow the dependency exemption claimed.

7. At the hearing in this matter, petitioner credibly testified that, because his mother was on a limited income, he paid the balance of her rent and general living expenses. He also candidly testified that he was getting paid a small amount to care for her at home. Attached to the petition in this matter is an agreement between petitioner and Mrs. Mary's Place HCS Inc.,

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<sup>1</sup> The \$523.00 was used to offset petitioner's tax liability for tax year 2008.

DBA Heart to Heart Home Care, Inc. (H2H), wherein H2H agreed to pay petitioner for his mother's live-in home care. The record does not contain any evidence that petitioner paid someone to care for his mother while he was employed or pursuing employment.

### **CONCLUSIONS OF LAW**

A. As noted, the notice at issue is a notice of disallowance that denied petitioner's dependent care credit which was allegedly incurred for the care of his mother. "A tax credit is 'a particularized species of exemption from taxation'" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, 181 AD2d 216, 219 [3d Dept 1992], citing *Matter of Grace v State Tax Commn.*, 37 NY2d 193, 197 [1975]) and a taxpayer carries "the burden of showing 'a clearcut entitlement' to the statutory benefit" (*Matter of Golub Serv. Sta. v Tax Appeals Trib.*, at 219 [citation omitted]).

B. Tax Law § 606 (c) (1) provides that the New York State child and dependent care credit is based on the federal child and dependent care credit "allowable under section twenty-one of the internal revenue code. . . ." Since the allowable New York child and dependent care credit is determined based solely on the corresponding federal credit, it is appropriate to refer to the provisions of the Internal Revenue Code (IRC) to determine petitioner's eligibility for this credit.

C. IRC (26 USC) § 21 provides for a tax credit for expenses a taxpayer incurs for the care of a dependent so that the taxpayer is free to work or actively search for a job. The Division does not take issue with petitioner claiming his mother as a dependent; review of the notice of disallowance indicates that the Division did not change petitioner's filing status from head of household nor disallow the dependency exemption claimed. The only issue in dispute is whether petitioner provided sufficient documentation to substantiate that he paid dependent care expenses in 2019 and the amount of expenses paid. After carefully reviewing the record, it is concluded

that petitioner neither established he paid expenses for the care of his mother nor the amount thereof.

D. The petition of Mauricio Salazar is denied, and the notice of disallowance, dated November 4, 2020, is sustained.

DATED: Albany, New York  
June 29, 2023

                  /s/ Kevin R. Law                    
ADMINISTRATIVE LAW JUDGE